IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1224 OF 2002

Yashwant Kakadya Jadhav]
R/o. Audhane, Tal: Dahanu]
Dist : Thane, at present in]
Kolhapur Central Prison, as]..Appellant
C. No. 1633, Kolhapur](Ori.Accused)

versus

State of Maharashtra ..Respondents

Mr. Anil Jadhav, Advocate appointed, for the Appellant / Original Accused.

Mrs. P. H. Kantharia, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
Smt. R. S. DALVI,JJ.

DATE : 22ND NOVEMBER, 2006

ORAL ORDER :

1. Heard Mr. Anil Jadhav, Advocate appointed for the Appellant - Accused and the learned APP for the State.

2. Accused is convicted under Section 302 of Indian Penal Code and is sentenced to suffer R.I. for life and to pay a fine of Rs.1,000/- in default

R.I. for 3 months. Accused is in jail since 7.6.1999.

3. Accused was charged for committing murder of his wife. The day prior to the incident the accused and his wife has attended a marriage. There, according to the prosecution, the wife of the danced with somebody else. That made accused furious. On the next day both of them consumed Tadi and under the influence of Tadi, accused quarrelled with her and questioned her about this incident of dancing and then according to the prosecution the accused banged the head of his wife on cement beam, which resulted in injuries to the head and resultant death.

4. Advocate for the accused contended that even if the prosecution case is accepted as it is, and looking to the background, facts and circumstances and the injuries, this could not be a case under Section 302 of IPC but it would be a case under Section 304-Part II of IPC, because accused cannot be said to have any intention to kill his wife though he has a knowledge that injuries which he was causing to his wife were likely to cause death. He,

therefore, contended that the conviction of the accused under section 302 of IPC is wrong, it should be set aside and conviction is required to be altered to Section 304-Part II.

5. When questioned, the learned APP could not satisfy us, as to how conviction under Section 302 of IPC was justified, in the circumstances.

6. Medical evidence in this case proved by P.W. 7 Dr. Preeti Harish Sawardekar, shows that there was CLW on forehead i.e. glabella area 4 cm x 1 cm x 1 cm, abrasion over the left maxilla 6 cm x 4 cm, fracture of left and right frontal bone, fracture of right and left maxillary bones in multiple pieces and fracture of nasal bone and fracture of mandible.

7. Admittedly the accused and his wife both were drunk. Object over which the head was banged was 4 ft. height cement beam and looking therefore to the background, the submission of the learned advocate for the accused has to be accepted.

8. In the result, Appeal is partly allowed.

Accused is acquitted of the offence under section 302 of the IPC. However, he is convicted under Section 304 - Part II of IPC and is sentenced to suffer R. I. for eight years and pay fine of Rs.1,000/- (Rupees One Thousand) in default R.I. for three months. Accused is in jail from 7.6.1999.

(D.G. DESHPANDE, J.)

(Smt. R.S. DALVI, J.)